

APPENDIX G.5

COMPENSATION OF FULL-TIME FLSA-EXEMPT PERSONNEL FOR STATE FIRE MOBILIZATION ASSIGNMENTS

A BASIC GUIDE

Purpose

There have been recurring questions regarding the means for compensating full-time FLSA-exempt personnel for state fire mobilization assignments. The underlying question is: Can exempt personnel be granted extra compensation without compromising their exempt status?

These guidelines answer that question and provide policy and procedure examples.

Fair Labor Standards Act

The federal Fair Labor Standards Act establishes the standards and requirements for employee compensation. Employees who meet minimum prescribed standards of responsibility and are paid a salary (as opposed to an hourly wage rate) are classed as “exempt” from FLSA compensation rules. The FLSA “test” for determining exempt status is beyond the scope of these guidelines.

The primary thrust of the FLSA regulations for exempt status addresses the loss of that status when an employee is subject to deductions from pay, not additions to pay.

The regulation specifically allows for additional compensation, and consistent letter rulings state that such additional compensation may be made on any basis.

Many public employers who otherwise pay exempt employees on a salary basis also have some form of overtime compensation that may be in the form of additional pay (often at a straight time rate) or compensatory time.

Regulations

The regulations include a specific allowance for additional compensation besides salary: Minimum guarantee plus extras. It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee’s compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. 29 CFR Section 541.118(b).

Another regulation that is notable applies to overtime payments: Section 7(p)(2) of the FLSA provides that where state or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability. 29 CFR Section 553.30(a).

The important aspect of this regulation is the reference to “occasional or sporadic”, which is further defined in the succeeding subsection:

The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services that is at the time best met by the part-time employment of an individual who is already a public employee. 29 CFR 553.30(b)(1).

Administrative Letter Rulings: Department of Labor, Wage and Hour Division

Two letter rulings dated April 6, 1995, from Daniel F. Sweeney, Deputy Assistant Administrator, address the point in question.

- (1) Opinion concerning whether a salaried exempt employee can be paid additional compensation for services rendered in excess of 40 hours in a workweek.
- (2) Does the payment of additional compensation to employees who meet both the duties test and salary basis for exemption under Part 541 defeat an otherwise valid exemption?

Response:

Additional compensation besides the required minimum weekly salary guarantee may be paid to exempt employees for hours worked beyond their standard workweek without affecting the salary basis of pay. Thus, extra compensation may be paid for overtime to an exempt employee on any basis. The overtime payment need not be at time and one-half, but may be straight time, or at one-half time, or flat sum, or on any other basis.

Department of Labor Field Operations Handbook

This reference clearly allows the use of either overtime or compensatory time for exempt employees:

Extra Compensation Paid for Overtime

Extra compensation may be paid for overtime to an exempt employee on any basis. The overtime payment need not be at time and one-half, but may be straight time, or flat sum, or on any other basis. Section 22b01.

This appears to be based on the 1995 administrative letter rulings cited above.

Court Rulings

Court rulings on the question of additional compensation effecting exempt status are split. The 4th Circuit has explicitly found that employees exempt under the act (FLSA) may be paid overtime (on whatever basis) for hours worked beyond their regular schedule. No federal court has unequivocally condemned such practices. One Federal District court has expressly approved straight-time overtime, but another has suggested that hourly overtime would invalidate the exemption. None of these court rulings have addressed the administrative letter rulings by the Department of Labor or the potential good faith reliance defense thereon.

Review of the relevant case law indicates that regular and consistent payment of overtime or compensatory time, in conjunction with normal and regular duties and assignments, may defeat salaried status. If the extra hours are usual and/or regularly anticipated, additional compensation for such extra hours is not considered generally consistent with salaried status. These characteristics contrast sharply with the reference in the regulations to "occasional or sporadic" instances of special part-time or temporary public employment, which are exceptions from even normal (i.e., non-exempt) overtime payment if the work is undertaken at the sole option of the employee. The point is noted because state fire resource mobilizations are clearly "occasional and sporadic" as defined by the Department of Labor.

Decision Summary

Department of Labor regulation specifically permits additional compensation besides salary for exempt employees.

State fire resource mobilization is an infrequent event, only implemented in the event of a major emergency situation requiring resources beyond those available locally or by virtue of mutual aid. Court questions on the effect of additional compensation payments to exempt status center on regular and consistent local practices.

Extra compensation for exempt status personnel, granted for response to major emergency incidents that are infrequent and unusual, is allowable, and such extra compensation will not defeat salaried status.

Implementation Procedure

Local fire protection jurisdictions that have concluded that extra compensation is allowable for their exempt personnel responding to state fire resource mobilizations have generally enacted a policy prescribing the principles for granting such extra compensation, and, in some instances, incorporated provisions for it within their staff salary and benefit program. Such policies and procedures are encouraged because they can incorporate the legal foundations for them and prescribe the principles for allowing such payments.

Examples of policies and procedures are included.

RESOLUTION

Compensation for Special Non-District Emergency Assignments

WHEREAS, the fire services within the State of Washington are the primary emergency response to all kinds of emergency and disaster situations; and

WHEREAS, provisions have been or may be made at the local, regional, and state levels for fire services response commensurate with the demands of the situation; and

WHEREAS, fire resources from non-host jurisdictions may be called through mutual aid and other agreements, and may be further supplemented by additional fire resources mobilized by the State of Washington pursuant to the State Fire Services Mobilization Act, Chapter 38.54 RCW; and

WHEREAS, the personnel and equipment of _____ County Fire Protection District _____ may be called to respond to emergency or disaster situations outside of the District by special agreement or by a mobilization request by the State of Washington, including personnel exempt from state and federal overtime compensation laws; therefore be it

RESOLVED by the Board of Commissioners of _____ County Fire Protection District _____ as follows:

1. The response of exempt personnel of the District to major emergency incidents outside of the jurisdictional boundaries of the District is recognized and deemed to be in the best interest of the District, the region, and the state.
2. Compensation should be paid to exempt personnel who respond to major emergency incident situations commensurate with the time, duties, and responsibilities of the work undertaken in such circumstances.
3. The Board of Commissioners of the District may authorize and grant, in its sole discretion, a special duty bonus to any exempt employee of the District as compensation for special emergency assignments not performed on behalf of the District.
4. The form and amount of special duty bonus shall be at the sole discretion of the Board of Commissioners.
5. Reimbursement of any special duty bonus granted in accordance with this Resolution shall be sought from or through the State of Washington when there are provisions for such reimbursement by either agreement or law.
6. This Resolution and all provisions hereof shall and are hereby declared to be effective _____.

RESOLUTION adopted in regular meeting this _____ day of _____, _____.

FIRE DISTRICT POLICY

Compensation for Special Non-District Emergency Assignments

The response of exempt personnel of the District to major emergency incidents outside of the jurisdictional boundaries of the District is recognized and deemed to be in the best interest of the District, the region, and the state.

Full time employees of the District responding to and participating in state fire resource mobilization shall remain employees of the District, and shall be compensated as prescribed by the current Salary and Benefit Program for Full Time Staff Personnel or the current agreement between the District and IAFF Local _____ as applicable.

Reimbursement of special assignment compensation expense shall be sought from or through the State of Washington when there are provisions for such reimbursement by either agreement or law.

FIRE DISTRICT STAFF SALARY AND BENEFIT PROGRAM

Special Compensation for State Fire Mobilization Service

The Board of Commissioners of the District has declared that participation in state fire mobilization pursuant to the *Washington State Fire Services Resource Mobilization Plan* is in the best interest of the District.

Exempt district personnel responding to and participating in state fire mobilization shall remain employees of the District at all times. They may be granted special extra hourly compensation for all extra hours as follows:

Fire Chief	\$ _____
Assistant Chief	\$ _____
Deputy Chief	\$ _____
Division Chief	\$ _____

This special compensation provision is made in recognition of the special requirements and duties of their state fire mobilization assignments, and is subject to the review and approval of the Board of Commissioners.

Non-exempt District personnel responding to and participating in state fire mobilization shall remain employees of the District at all times, and shall be paid their usual regular or overtime rates for all hours pursuant to normal and usual compensation procedures.